

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Federal Joint-State Board
on Universal Service

CC Docket No. 96-45

DOCKET FILE COPY ORIGINAL

To the Joint Board:

**Some observations on the implementation
of the provisions of the Telecommunications Act of 1996**

Background

I wrote the attached letter to the members of the Federal Joint-State Board on Universal Service as a personal reflection on some issues that have come to my attention as I have talked with many people in industry and education about the implementation of the provisions of the Telecommunications Act of 1996. I have subsequently been advised that it would be desirable for me to file these comments on the docket indicated above so that they may become a part of the public record in this matter.

Please note: the version of the document contained herein differs slightly from that originally mailed to the members of the Joint Board. In addition to a few minor editorial changes in the body of the letter, I have revised the section titled **Addendum A** to provide additional information. Because of these changes I have sent another copy of this document to its original recipients.

As the Executive Director of the Office of Government Information of The Lutheran Church—Missouri Synod, I am obligated to inform the members of the Joint Board that the observations and views contained in the attached letter are my own personal reflections. They do not represent a public policy position of The Lutheran Church—Missouri Synod.

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Summary

In the debate over the implementation of the provisions of the Telecommunications Act, too much emphasis has been placed on the means of distribution before proper consideration has been taken of some of the pre-conditional issues that need to be decided before any discussion of funding formulae or distribution methods can be usefully undertaken. I encourage the members of the Joint Board to take a 'top down' approach in resolving these issues. This means first clarifying the goal to be achieved, then determining the scope and size of the Universal Service Fund necessary to meet that goal. Only when these things have been done can the Joint Board usefully take up the questions of funding formulae and distribution systems.

As the Joint Board moves into resolving these implementation issues, I hope that it will keep in mind the special needs of three general classes of schools: rural schools, which because of their geographic isolation require additional assistance; impoverished schools, which need special assistance because of the type of students that they serve; and small-schools, for whom the highly fixed-cost nature of acquiring telecommunication services combined with limited staff resources to administer complex application procedures and comparatively little ability to raise additional funds, place them in a significantly disadvantaged position when it comes to acquiring telecommunication services for their students.

I hope that the Joint Board will also keep in mind that private schools (which comprise 24% of all primary and secondary schools in America) are included in this legislation. Because of the unique and diverse ways in which these schools are funded and administered (as compared to public schools), the Joint Board needs to structure the administrative mechanisms it creates so as not to disadvantage these schools and the students they serve.

In an addendum to the letter (**Addendum A**), I offer a suggestion for a simplified needs analysis test that will work for both public and private education. By defining *affordability* as the relationship between the cost of a service and the resources available to acquire the service, the Joint Board can provide a method of evaluating need that is fair and equitable for the vast majority of schools, public or private.

In a second addendum to the letter (**Addendum B**), I discourage the Joint Board from allowing schools to re-market telecommunication services for the purpose of creating community networks.

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Office of Government Information

26 July, 1996

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[Salutation]:

I am writing to you, as a member of the Joint Board charged with responsibility for guiding the Federal Communications Commission in the implementation of the provisions of the Telecommunications Act of 1996, for the purpose of sharing some thoughts and reflections that have emerged in my discussions with a variety of parties—from industry and education—on this matter.

As an executive in a church body whose congregations operate over 2,000 schools, I am naturally very interested in this issue. It is, however, the policy of our church body not to lobby the government except in matters impacting religious liberty or significant moral concern to us as citizens in society as a whole. As important as the implementation of the Telecommunications Act may be to our schools, it does not fit into those categories. Thus I am writing to you not to ask you to support a specific proposal, but to share with you some of the insights that I have developed in the course of my discussions with others in the educational and telecommunications industry circles, in the hope that you may find some of these insights useful as you carry out the task with which you have been charged.

I should say at the outset that I do not favor any one of the proposals before the Joint Board over the others. I have sought instead to focus on identifying the central problems that need to be resolved before an effective discount model and delivery method can be identified. I am particularly concerned with issues from the perspective of private schools, but in many cases the issues overlap with public schools.

To this point, far too much emphasis has been placed on the method of distribution and too little focus on the underlying problems that effect schools, both private and public. I am convinced that the better way to proceed is to identify the issues that effect the implementation of telecommunications access to schools, and only then to decide upon a discount model and delivery method.

I have divided the following observations into three groups: *pre-conditional issues*, those unsettled matters that must be settled before taking up the question of how to implement the provisions of the act; *implementation issues*, those that become significant once the

question of implementation is to be addressed, and *special concerns of private education*, which highlight the unique concerns of the 24% of America's primary and secondary schools that operate outside the public school system. In two addenda I offer some more specific suggestions on particular questions in which the Joint Board may be interested.

Pre-Conditional Issues

Clarification of the Goal

From my discussions with a wide range of parties, it is apparent that there is a fundamental confusion about what the goal of this act is, as it regards schools and libraries in particular. On the whole, industry-related groups have understood the purpose in a narrow way, defining telecommunication in a *technical* sense, as the 'pipe' that moves data (analog or digital; voice, TCP/IP packets, FAX, or video) between two (or more) points. By contrast, education-oriented groups—including in this case also Secretary of Education Riley and the Vice-President Gore—have tended to define telecommunication in a *functional* sense, thinking of what one can do with that 'pipe': Internet access, distance education, and resource sharing.

This is a crucial distinction, and the confusion over this definition appears in the request for further comment in the form of 72 questions distributed by the Common Carrier Bureau (CCB questions) on 3 July, 1996. For example, question 19 asks, "What percentage of telecommunications services (*e.g. Internet services*) [emphasis mine]" Technically speaking, Internet services are not telecommunications services. Telecommunications services are the means by which one obtains Internet services. The question as stated seems to presume the functional rather than the technical definition, but the Joint Board has nowhere made that definition clear.

This clarification is absolutely essential pre-condition for answering many of the CCB questions. For example, if the goal is to provide functional Internet access to schools and libraries, then the best answer to the question about inside wiring (the first part of question 7) is probably "yes"—schools and library cannot (functionally speaking) obtain Internet access without the inside wiring, and many, if not most, schools do not have the funds to arrange for such wiring themselves. If, on the other hand, the goal is to provide schools and libraries with telecommunications services in the technical sense, then the answer is clearly "no".

Even more importantly (and not touched upon by the CCB questions) is the question of payment from the Universal Service Fund (USF) to Internet Service Providers (ISPs). If the goal of the act is to provide schools and libraries with Internet access, then coverage of at least some of the fees charged by ISPs is absolutely necessary. ISPs are a *sine qua non* for Internet access, and their role has been largely overlooked or ignored in this process. This would seem to suggest that the Commission is leaning toward a technical rather than a functional definition, the opposite of what is implied by CCB question 19 as discussed above.

From these two examples it ought to be clear that the Joint Board must take a top-down approach to resolving these matters. That requires a clear definition of what 'it' is that the law provides for with respect to schools and libraries in particular. Without that clear definition it will be impossible to sort through the confusing morass of replies to the CCB's

questions, for the respondents are in many cases presuming conflicting definitions of the goal and these pre-conceptions color their responses. Before the scope, size, and method of distributing the USF can be determined, we must know what the goal is.

Scope of the Fund

This issue flows directly from the preceding discussion, and in turn informs the next. How the Joint Board interprets the goal of the law will determine how it determines the scope of the fund. By 'scope of the fund' I mean the specific services for which telecommunications service providers can be reimbursed from the USF. Among these 'scope' questions are the definitions of universal service, core services, etc. All of these issues are dependent upon the clarification of the goal to be achieved with regard to schools and libraries. Once the goal is clarified the scope can be determined; once the scope is determined the size can be calculated.

Size of the Fund

I realize that the size of the fund is a thorny issue. If the goal of the act with regard to schools and libraries is to provide telecommunications services in the technical sense and the core services are defined narrowly, the fund size will be smaller. If the goal of the act is understood to be providing schools and libraries telecommunications services in the functional sense, the fund size will be significantly increased.

Given the large number of schools and libraries that may apply to the fund, and the great disparity in the technological needs and the savvy of the administrators of those institutions, the Joint Board is going to have to face the fact that it will be impossible to get a completely accurate prediction of the demand upon the USF at the outset. The only course that seems practical to me is to set a reasonable size for the first year and be prepared to adjust the size every year until a track record is established. This will likely require a phased approach to implementation that will limit the number of new applicants each year. This should not be burdensome for the schools and libraries, as many of them are not in a position to take advantage of the opportunity that is offered them in the first year or two.

The Joint Board must also balance its responsibility to the consumers who will ultimately pay for these services. This will determine the speed at which institutions are allowed to phase into the program. A phase-in period of three to five years seems to me to allow for the adjustments necessary to accurately size the fund and allow schools and libraries the time that they need to make their own implementation plans, many of which will also have to be phased in over time.

As a further note, the Joint Board may want to establish separate phase-in periods for core services and advanced services, depending on how those issues are resolved in the discussion of the scope of the fund.

Implementation Issues

Unfortunately, among the groups with whom I have spoken, the primary focus has appeared to be on the method of disbursing the funds rather on the more fundamental issues that I have suggested above are necessary preconditions to any discussion of

implementation. I would suggest that it is fruitless to begin to discuss the best means of implementing the discount language of the law until these prior matters are settled.

Once the Joint Board has settled those matters, it can take up the various suggestions for how to implement the discounting provisions of the law. The proposal that I have encountered seem to fall into two groups: one, championed by the education and library community, that prefers percentage discounts based on some benchmark figure (or in some cases "the best available rate"); and another, preferred by the telecommunications industry, that envisions providing schools and libraries with funds indirectly through the form of credits that can be applied toward the purchase of whatever available services the school or library requires, from whichever *bona fide* telecommunications provider that it wished to deal with.

I neither endorse nor prefer one plan over the other. As far as I am concerned, either plan is acceptable as long as it meets the goal which the Joint Board shall define. I do believe, however, that when it begins to deal with the implementation issue, the Joint Board ought to consider the following principles:

Rural-School Friendly

Much has already been said about the special problems associated with serving rural schools. In many ways these schools, which are isolated by distance from both other resources and from telecommunications providers, need the services that this act will provide more than their more urban counterparts. Yet the cost of delivering services to remote locations is very high.

I believe that the interests of rural schools can be served under either the industry's funds-for schools approach or the education/library coalition's percentage discount approach. Under the funds approach the formula for allocating funds for schools would have to contain a factor for remoteness of location (presumably based on the distance of the institution from the closest telecommunications provider point of presence). Under the percentage discount approach the percentage of discount would presumably be increased based on the remoteness of location using some formula that take the same distance into account.

Impoverished-School Friendly

There is also justifiable concern for those areas, urban and rural, where the poverty of the community is itself a significant factor in the ability of the school and/or library to obtain telecommunications services.

Again, I believe that the needs of schools and libraries in impoverished areas can be met under either proposal, using the same types of techniques described above. The funds approach can include a factor for economic hardship and the percentage-discount approach can increase the level of discount employing a formula based on the same information.

There is one concern here that is different from the issue of remoteness. Distance is an objective measure that can be easily determined. Measuring the impact of economic hardship is more difficult. There is always a temptation for schools to over-report the economic hardship of their students in order to gain more assistance. Fairness requires

that the Joint Board adopt a measure of impoverishment that does not depend upon the self-reporting of the schools.

Small-School Friendly

While the problems of rural and impoverished schools have received considerable attention in the discussion to this point, I believe that most of the contributors have overlooked the particular problems faced by small schools, and this category in particular effects private education.

Fixed costs and incremental (per pupil) factors

One of the chief concerns that small schools must face when implementing telecommunications technology is that the costs of implementing such technology are largely fixed costs rather than incremental (per pupil) costs. For example, the installation and operation of a T-1 line costs the same whether the school it serves has 100 students or 200 students. The cost of internal wiring (if it is to be considered) is related to the number of classrooms that are served, not the number of students served.

In calculating the level of funding (using the funds approach) or the level of discount (using the percentage approach) some consideration must be given to the number of students served. However, the bulk of the weight in the funding formula (using the funds approach) should be directed to the fixed cost element in the formula rather than the incremental (per pupil) element. In fact, a better measure would be the number of connection points (classrooms and administrative rooms) served than the number of students served.

Fewer discretionary funds

A further factor which exacerbates the problems faced by small schools in implementing educational technology in general (and telecommunication services in particular) is the lack of discretionary funds. Small schools have less money than large schools to begin with. They also have less ability to raise funds for special projects.

For example, if a school of 500 students and a school of 100 students both receive (as an example) a 75% discount on telecommunications services, the school of 500 students will have more resources to raise the 25% of the uncovered costs than the smaller school. It is quite likely that a school of around 100 students (and there are many of them) would not be able to raise the 25% at all, either from its current budget or from other fund-raising methods.

By contrast, if the large school were provided with (for example) \$10,000 in credit toward telecommunication services and the small school were provided with \$8,000, both schools would be able to provide their students with some measure of access to telecommunications service. In this case the funds approach (especially if structured as discussed in the previous point) would not create perfect equity, but it would serve the students who attend small schools, public or private, better than the percentage approach.

I should add that the private schools community is particularly disadvantaged in this respect. Not only do they tend to be smaller overall, but public schools benefit from a wide range of state and local level funding sources that are available to augment technology and telecommunications into the classroom which are not available to private schools. To be

equitable, the means of measuring the school's need must take into account all of its sources of revenue.

Administrative concerns

In many small schools even the principal is not a full-time administrator. A process which requires school administrators to do extensive work in order to qualify for, or to apply for, benefits will be very detrimental to small schools. This is especially the case for private schools where there are often not the equivalent of school district officials who can provide support services for local administrators.

In this case either the funds approach or the percentage approach will be workable, as long as the administration of the plan is structured in such a way as to reduce the administrative overhead required at the local level.

Special Concerns of Private Education

The act clearly calls for services to be provided to *all* schools, not simply public schools, a principal which all parties seem to recognize. Much of the implementation discussion, however, has seemed to presume the administrative structure of public schools as a backdrop. Private schools do not want special treatment, but they also do not want to be overlooked in this process, either by design or, more likely, by accident. The private schools, which make up 24% of all the primary and secondary schools in America, cover the same spectrum as the public schools, ranging from impoverished urban to wealthy sub-urban, from rural to town and city, from large to small. In most respects their needs are no different from those of the public schools, though their administrative structures may be different, and they tend overall to be smaller in size.

Private schools do not want special treatment, but they do hope that the members of the Joint Board will be aware of the following principles that will help diminish the inequity between private and public schools on this issue.

Limiting State and Local Government Involvement

The Joint Board should reject any proposal that would allow the funds from the USF to pass through or in any way be administered by state or local officials. In some states in the past educational officials administered resources in such a way that private schools have occasionally been locked out of receiving resources to which their students have been legally entitled. Whether through malice, ignorance of the law, or neglect, state and local officials naturally tend to steer resources to their own institutions rather than to administer them equitably.

It would be far better if the schools have direct interaction with the administrators of the disbursement system and that telecommunications providers be paid directly from the USF. In each case the reduction in the levels of administrative bureaucracy would contribute to reduced overhead costs and streamlined administration.

The Constitutional Question

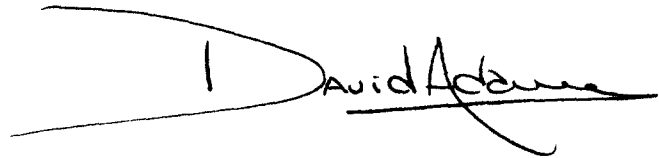
Early in the discussions the concern arose whether payments from the USF in support of private schools would constitute the diversion of public funds to private education. This is particularly important in the context of religious schools. In some cases (as in Title I programs) public funds have been allowed to benefit students at private schools with religious affiliation, so long as the services were provided off-site. Clearly such an arrangement would be impracticable for the provision of telecommunication services.

After some discussion, it appears that this will not be a problem as long as the payments from the USF are clearly structured as private funds. This is another reason that the funds should not pass through state or local government control.

The Joint Board would do well to seek legal counsel at some point in the process to ensure that whatever scheme for disbursing the resources of the USF is finally adopted does not leave the government, or private schools, in danger of legal action on this matter.

I am sorry to have presented you with such a lengthy document, but I hope that these observations will be of some use to you in your deliberations. Should you wish to have further input from me on these matters, either in writing or personally, I am always at your disposal. Thank you for the opportunity to share this material with you. May God bless your efforts to provide telecommunications services to advance the learning of the next generation of our children.

Yours respectfully,

A handwritten signature in black ink, appearing to read "David Adams", with a large, sweeping flourish extending from the left side of the signature.

The Rev. David L. Adams
Executive Director

Addendum A: a simplified needs measurement test

Among the problems that I have observed as I have talked with representatives of both the industry and the schools communities is the tendency to promote rather baroque systems for measuring the level of need of a school. The Joint Board would do well to remember Einstein's dictum: "Everything should be made as simple as possible, but not more so." However, some relatively simple schemes do not work. Among these are:

- Simply taking the mean family income of a school district does not work for private education. Private schools often draw students from more than one school district, and often from districts with substantially different family income levels.
- Assessing the mean family income of a school does not work because most private schools do not have, and cannot get, this information.
- Simply counting the number of students involved in programs like Title I or the School Lunch Program also does not work, as many private schools do not participate in these programs even though the students they serve would otherwise be eligible for them.

Other proposals that take into account a multitude of weighted factors do not work because they are so complicated that administrators of small schools simply do not have the time to do the research necessary to fill out the forms.

In evaluating plans that call for linking the evaluation of a school's ability to acquire telecommunication services to statistics that measure the wealth and/or poverty of the public school district, I hope that the Joint Board will remember that these statistics measure the ability of taxpayers to pay. This is not the same thing as measuring the ability of schools to afford telecommunication services. In particular, this is the case for four types of schools:

- **Public schools in districts where the expansion of resources has not kept pace with the increased cost of education.** In a significant number of school districts voters have failed to pass funding increases to keep pace with the increasing costs of education. Thus, there arise situations in which schools in two communities with similar profiles (in terms of mean family income and percentage of owner-occupied housing, for example) have significantly different financial profiles, and thus significantly different abilities to afford telecommunications services.
- **Schools which are under court-ordered desegregation plans.** These plans create a situation in which the financial profile of the district does not necessarily accurately reflect the ability of an individual schools to afford telecommunication services. Furthermore, the cost of implementing such desegregation plans places a drain on the financial resources of districts and schools that detract from their ability to organize their finances to acquire the desired services.
- **Magnet schools.** These unique schools often attract students from across geographical boundaries. The financial profile of the district in which the school is located does not necessarily reflect the economic situation of the students.

- **Private schools.** In a great many cases, private schools draw students from multiple public school districts. Moreover, since these schools are funded in many different ways, there is no necessary correlation between the wealth of families in a school district and a particular school's ability to acquire telecommunication services.

In the light of these examples it should be clear the ability of a school to afford telecommunication services is not a function of location, for location is neither sufficient to determine the community which a school serves, nor is the financial profile of the community sufficient to determine what a school can afford. *Affordability is the relationship between the cost of a service and the school's available resources.* In order to be equitable, a funding formula must take this relationship into account.

I suggest that the easiest, and fairest, means of assessing the need of a school for assistance (or establishing a discount level) is this: *measure the cost of the desired service as a percentage of the overall revenue available to a school.*

An example:

A school that requests discounted service will have to provide information about the income available to it from all sources. The cost of delivering the desired service is then calculated as a percentage of the revenue available to a school. A simple table could then translate the category of need into a discount level. (Note: This is just a sample; these are not intended to be actual figures. These would require more study to get right)

Cost of service as a percentage of total fiscal resources	Support Level	Discount Percentage (if the FCC takes this approach)	Funds/Credit amount (if the FCC takes this approach)
<.25%	1	30%	\$1,000
.25-.40%	2	40%	\$2,000
.40-.50%	3	50%	\$5,000
.50-.75%	4	60%	\$7,500
.75-1%	5	70%	\$10,000

etc. as necessary. Where the cost of implementing telecommunication services exceeds 1% of a school's budget, that school should qualify for additional 'lifeline' assistance

This system takes into account both the remoteness of the school (as a part of the cost of delivering the desired service) and the impoverishment of the school (by measuring the fiscal resources available to the school). It also takes into account all the financial resources available to a school from federal state and local levels for public schools, or from tuition, grants, and endowments for private schools.

This approach has the advantage of being simple to calculate and easy from an administrative perspective. The administrators already know how much money they have

available for a given year. The telecommunications provider will calculate the cost of the service, and the schools can seek bids from multiple providers, thus promoting competition. Schools and districts can aggregate their buying power to get the best possible deal, and the discount level would be calculated independently for each school of the consortium.

From the industry perspective this system has the advantage of creating a legitimate and competitive market without asking them to "give away the farm."

The only other decision that the Joint Board will have to make is whether to allow the first year start-up costs of a service to be calculated in with the total, or whether to make provision for some kind of 'start-up grant' to meet those costs. Personally I prefer the former, but either will work.

Addendum B: on the question of schools re-selling services to the community for educational purposes

Some of the proposals before the Joint Board calls for granting the schools the ability to re-sell services to the community for educational purposes. I believe that this is a bad idea, and one that should be rejected.

In the first place, this would change the nature of the work of the school. In the *Republic* Plato argued that a just society is one in which every component new its function and performed it well. I happen to think that Plato got this point right. The fundamental function of the primary and secondary schools is to educate the next generation. A school that became involved in setting up and operating a community network would be departing from that primary function to perform another task. I happen to believe that community networks are a good idea, and that schools and libraries should be a part of them through their own connection. Schools and libraries should not, however, be running them.

This suggestion should also be rejected on the grounds that it is would create a situation in which schools and libraries would be taking customers away from other businesses. In fact, it would create a situation in which telecommunications providers would be required to subsidize an entity which would compete with them for customers. This would lead to legal complications that should be avoided.

Furthermore, it would be very difficult for any private school to become involved in this effort. Since in many communities local education officials tend to be hostile toward private schools, it is doubtful that such school-based community networks would serve the families of those with children attending private schools very well. The Joint Board should avoid anything that would create this kind of inequity.

There are other and better ways to promote the same end. If establishing community networks are a worthy goal, then federal, state, and local government should be encouraged to work directly with telecommunications providers and Internet service providers to create the financial incentives and administrative framework to establish them that will allow a large measure of community control and involvement without distorting the role of the schools.

This is a separate issue from the question of schools and libraries being allowed to charge for access to information for which they themselves must pay. For example, a library or school may well want to have the electronic edition of the Oxford English Dictionary for legitimate educational reasons. This is an expensive item. A school or library could allow others (who are not educators or students) access to this material for an agreed fee as a means of recovering their cost to obtain the item. Such re-marketing access to resources is already done, and is a different issue from re-marketing telecommunication services *per se*.

Certificate of Service

I hereby certify that I have caused to be mailed this 7th day of August, 1996, copies of the foregoing comments by first class mail, postage pre-paid, to the following persons:

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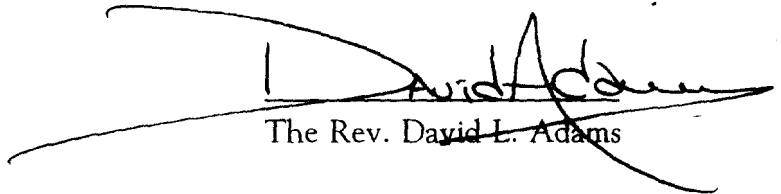
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Respectfully submitted,



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